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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

LIEM HIEU LE,	)	<b>CASE NO. 3:08-cv-00727-JL</b>
	)	
Plaintiff,	)	<b>SUPPLEMENTAL BRIEF IN</b>
	)	<b>SUPPORT OF CITY OF</b>
v.	)	<b>PITTSBURG'S 12(b)(6) MOTION</b>
	)	
CITY OF PITTSBURG,	)	
	)	Date: April 23, 2008
Defendant.	)	Time: 9:30 a.m.
	)	Location: Courtroom F, 15 <sup>th</sup> Floor
	)	Judge: Magistrate Judge Larson

Subsequent to the City of Pittsburg's filing of the reply brief on its motion to dismiss, Pittsburg's defense counsel received a copy of a pleading in *In Re Liem Hieu Le and Lan Huynh Do*, United States Bankruptcy Court, Northern District of California (Oakland) Case No. 07-43151-RJN. Upon review of certain items from the online docket in this action, it appears that plaintiff in the present action is the same person as the debtor in the bankruptcy court action. Attached hereto as Exhibit A is a true and correct copy of the first page of the Bankruptcy Court's online docket for the bankruptcy action. This Court is hereby requested to take

1 judicial notice of the docket and papers filed in the bankruptcy action.

2 Attached as Exhibit B is a true and correct copy of the "Schedule A – Real  
3 Property" filing by debtor Le in the bankruptcy action. This document was obtained  
4 from the bankruptcy court's online docket, listed as part of document number 10.  
5 This schedule lists 1160 York Street in Pittsburg, California, as an asset of the  
6 estate. Plaintiff's "reply" to Pittsburg's Rule 12(b)(6) motion identifies this same  
7 address as one of the properties subject to the current District Court action.  
8 Attached hereto as Exhibit C is a true and correct copy of a portion of Schedule F  
9 from the Bankruptcy Action, also part of docket Item 10. This schedule lists the  
10 City of Pittsburg as a creditor for "Civil Penalty" related to 430 and 415 9<sup>th</sup> Street,  
11 and 1160 York Street in Pittsburg. These are the addresses identified as the source  
12 of plaintiff's claim in the "reply" brief in opposition to the Rule 12(b)(6) motion.

13 Plaintiff Le also attached to his "reply" certain exhibits which refer to events  
14 happening in January and April of 2007 as the basis for the present claim. See  
15 plaintiff's reply, Exhibit A. The Bankruptcy Court docketing sheet indicates that  
16 the bankruptcy action was filed on September 27, 2007. Since the alleged cause of  
17 action in the present case arose prior to the bankruptcy filing, plaintiff's claim in the  
18 present action is an asset of the bankruptcy estate. 11 U.S.C. §541. As such, the  
19 bankruptcy estate trustee is the real party in interest to any such claims, and has the  
20 exclusive right to bring an action based upon these claims. "[T]he bankruptcy code  
21 endows the bankruptcy trustee with the exclusive right to sue on behalf of the  
22 estate." *Estate of Spirtos v. San Bernardino* (9<sup>th</sup> Cir. 2006) 443 F.3d 1172, 1176.  
23 Under Federal Rules of Civil Procedure rule 17, only the real party in interest may  
24

1 bring an action.

2 Therefore, in addition to the fact that plaintiff has failed to state a cause of  
3 action, and has not clearly alleged any causes of action, plaintiff Le lacks standing  
4 to bring the claims suggested in his "reply" brief, as such claims appear to be assets  
5 of his bankruptcy estate. Defendant City of Pittsburg therefore respectfully requests  
6 that this Court dismiss the present action with prejudice.

7  
8 Dated: 4/9/08

GIBBONS & CONLEY

9  
10 By 

SEAN C. CONLEY

Attorneys for Defendant City of Pittsburg

1 **LE v. CITY OF PITTSBURG**  
2 **U.S. District Court, Northern District of California Case No. CV 08-0727-JL**

3 **PROOF OF SERVICE**

4 I am employed in the County of Contra Costa, State of California. I am over the age of 18  
5 years, and not a party to the within action. My business address is 1333 North California Boulevard,  
6 Suite 110, Walnut Creek, California, 94596. On the date set forth below, I caused to be served a  
7 true copy of the foregoing **SUPPLEMENTAL BRIEF IN SUPPORT OF CITY OF**  
8 **PITTSBURG'S 12(b)(6) MOTION** on the following person(s) in this action addressed as follows:

9 Liem Hieu Le  
713 Caskey Street  
Bay Point, CA 94565  
10 Tel: (925) 709-1063

*Plaintiff pro se*

11 ☒ **BY MAIL.** I am readily familiar with my firm's practice for collection and processing of  
12 correspondence for mailing with the United States Postal Service, to wit, that correspondence  
13 will be deposited with the U.S. Postal Service this same day in the ordinary course of  
14 business. I sealed said envelope and placed it for collection and mailing, following ordinary  
15 business practices.

16 ☒ **FEDERAL.** I declare that I am employed in the office of a member of the bar of this Court  
17 at whose direction the service was made.

18 ☒ **STATE.** I declare under penalty of perjury under the laws of the State of California that the  
19 foregoing is true and correct.

20 Executed on April 9, 2008

21   
22 JAMIE M. HEINTZ  
23  
24  
25  
26  
27  
28

PlnDue, DsclsDue

**U.S. Bankruptcy Court  
Northern District of California (Oakland)  
Bankruptcy Petition #: 07-43151**

Assigned to: Judge Randall J. Newsome  
Chapter 11  
Voluntary  
Asset

Date Filed: 09/27/2007

**Debtor**

**Liem Hieu Le**  
713 Caskey St  
Bay Point, CA 94565  
SSN: xxx-xx-5268

*aka***Liem Hieu Le & Lan Huynh Do Trust**represented by **Peter C. Pappas**

Law Offices of Peter C.  
Pappas  
2400 Sycamore Dr. #40  
Antioch, CA 94509  
(925) 754-0772  
Email:  
ppappaslaw@gmail.com

**Joint Debtor**

**Lan Huynh Do**  
713 Caskey St  
Bay Point, CA 94565  
SSN: xxx-xx-3942

*aka***Liem Hieu Le & Lan Huynh Do Trust**

represented by **Peter C. Pappas**  
(See above for address)

**U.S. Trustee**

**Office of the U.S. Trustee /Oak**  
Office of the U.S. Trustee  
1301 Clay St. #690N  
Oakland, CA 94612  
(510) 637-3200

Filing Date	#	Docket Text
09/27/2007	<u>1</u>	Chapter 11 Voluntary Petition, Fee Amount \$1039, Filed by Liem Hieu Le, Lan Huynh Do. Order Meeting of Creditors due by 10/4/2007. Incomplete Filings due by 10/12/2007. Section 521 Filings due by 11/13/2007. (Pappas, Peter) Modified on 9/28/2007 CERTIFICATE OF CREDIT COUNSELING FILED WITH THE PETITION.(jaw, ). (Entered: 09/27/2007)
09/27/2007	<u>2</u>	Statement of Social Security Number. Filed by Joint Debtor Lan Huynh Do, Debtor Liem Hieu Le (Pappas, Peter) (Entered: 09/27/2007)

IN RE Le, Liem Hieu & Do, Lan HuynhCase No. **07-43151**

Debtor(s)

**SCHEDULE A - REAL PROPERTY**

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H" for Husband, "W" for Wife, "J" for Joint or "C" for Community in the column labeled "HWJC." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

**Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HWJC	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
1160 York St, Pittsburg, Ca		C	520,000.00	420,000.00
142 Marin Ave, Bay Point, CA		C	330,000.00	320,000.00
1725-1729 Seminary Ave, Oakland, CA		C	2,000,000.00	1,582,000.00
33 Jefferson St, Bay Point, CA		C	375,000.00	296,000.00
37 S. Aurora St, Stockton, CA		C	1,000,000.00	800,000.00
713 Caskey St, Bay Point, CA		C	500,000.00	496,000.00
84 Beach Dr, Bay Point, CA		C	320,000.00	254,000.00
TOTAL			5,045,000.00	

(Report also on Summary of Schedules)

SCHEDULE A - REAL PROPERTY

Official Form 6F (10/06) - Cont.

IN RE Le, Liem Hieu &amp; Do, Lan Huynh

Case No. 07-43151

Debtor(s)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. (See Instructions Above.)	CODEBTR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. ....5268 Pittsburg, City Of 65 Civic Ave Pittsburg, CA 94565	C	Civil Penalty 430 E 9th St, Pittsburg, CA 415 E 9th St, Pittsburg, CA 1160 York St, Pittsburg, CA				550,000.00
ACCOUNT NO. ....5268 Rudolph Electric PO Box 1509 Manteca, CA 95336	C	Services performed 2007 37 S Aurora St, Stockton, Ca				1,000.00
ACCOUNT NO. ....5268 Smith Engineering Mike Smith 4 North Main Street Lodi, CA 94502	C	Service performed 2006 115 N Wilson Way, Stockton, CA				2,300.00
ACCOUNT NO. 4559-5021-0040-4831 Washington Mutual Bank P.O. Box 99604 Arlington, TX 76096	C	Consumer debt 2002-2007				10,100.00
ACCOUNT NO. 5542-8508-0127-7791 Washington Mutual Bank P.O. Box 78065 Phoenix, AZ 85062	C	Consumer debt 2006-2007				3,000.00
ACCOUNT NO. 4121-3708-0170-0272 Washington Mutual Bank P.O. Box 78065 Phoenix, AZ 85062	C	Consumer debt 2002-2007				6,800.00
ACCOUNT NO. 48562002290802224 Wells Fargo P.O. Box 10347 Des Moines, IA 50306	C	Consumer debt 2005-2007				1,400.00

Sheet no. 3 of 3 continuation sheets attached to  
Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal  
(Total of this page) **\$ 574,600.00**

(Use only on last page of the completed Schedule F. Report also on  
the Summary of Schedules, and if applicable, on the Statistical  
Summary of Certain Liabilities and Related Data.)

Total  
**\$ 746,980.00**

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS